

**ORDINANCE # 58-20-496**

AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS FOR  
FREDERICK COUNTY, MARYLAND TO AMEND AND REVISE THE DEFINITION OF  
"HOUSING FOR OLDER PERSONS" SET FORTH IN §1-20-5(B) OF THE COUNTY'S  
ADEQUATE PUBLIC FACILITIES ORDINANCE

**§1. Definitions.** - In this Ordinance, the following terms shall have the meanings indicated

"APFO" shall mean the County's Adequate Public Facilities Ordinance, codified as Chapter 1-20 of the Code

"BOCC" shall mean the Board of County Commissioners for Frederick County, Maryland

"Code" shall mean the Frederick County Code, 2004

"Department" shall mean the Planning & Zoning Department established by §1-13-1(a) of the Code

"Housing for Older Persons" shall have the meaning set forth in present §1-20-5(B) of the APFO

"Planning Commission" shall mean the Frederick County Planning Commission created by §1-13-16 of the Code

"42 U S C " shall mean Title 42 of the United States Code

**§2. Background.** – The BOCC desires to amend and revise §1-20-5(B) of the APFO to specify that the term "Housing for Older Persons" shall coincide with the definition of that term set forth in 42 U S C §3607(b)(2)(B), namely, housing intended for, and solely occupied by, persons sixty-two (62) years of age or older. The BOCC also desires to make corresponding changes to §1-20-7(F) to reflect the change in the definition

**§3. Legislative Determinations.** The BOCC determines that the amendments & revisions to the APFO contained in this Ordinance will be in the best interest of the citizens of the county and consistent with the general intent of the APFO

**§4. Procedural Requirements.**

(a) The BOCC initiated this Ordinance on December 6, 2007 by approving and adopting Resolution #07- 65

(b) Pursuant to §1-20-23(B), the Department referred this Ordinance to the Planning Commission for its review, comment and recommendations to the BOCC

(c) Pursuant to §1-20-23(B), the Planning Commission held an advertised public hearing on this Ordinance on April 16, 2008

(d) Pursuant to §1-20-23(B), the Department also referred this Ordinance to the municipalities within the county having adequate public facilities ordinances for review & comment and referred comments received from the municipalities to the Planning Commission and BOCC

(e) Pursuant to §1-20-23(C), the BOCC held an advertised public hearing on this Ordinance on June 26, 2008

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOCC THAT

**§5. Amendment & Revision of APFO Definition of "Housing for Older Persons."**

– The definition of the term "Housing for Older Persons" set forth in §1-20-5(B) of the APFO is amended and revised to read as follows

**"HOUSING FOR OLDER PERSONS** Housing intended ~~and operated for occupancy by persons 55]~~ FOR, AND SOLELY OCCUPIED BY, PERSONS SIXTY-TWO (62) years of age or older IN ACCORDANCE WITH THE PROVISIONS OF 42 U S C §3607(b)(2)(B), AS AMENDED. 7

~~(a) At least 80% of the occupied units are occupied by at least 1 person who is 55 years of age or older,~~

~~(b) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph, and~~

~~(c) The housing facility or community complies with rules issued by the Secretary of Housing and Urban Development for verification of occupancy, as set forth in the Fair Housing Act, 42 U S C §3601 et seq~~

**§6. Amendment & Revision of §1-20-7(F)** – Section §1-20-7(F) of the APFO is amended and revised to read as follows

(F) Any project which qualifies as "housing for older persons" defined in §1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter

(1) If the proposed project is a PUD or MXD that is not an adaptive reuse project, all or a portion of the project must have been designated as an Age-Restricted Community at Phase I in accordance with § 1-19-321(E)(7) or 1-19-324(E)(1)(k) of the Zoning Ordinance

New text is shown in CAPITALS and underlined Deleted text is shown as strike-through

(2) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for HOUSING FOR older persons, BY RESTRICTING OCCUPANCY TO PERSONS 62 YEARS OF AGE AND OLDER and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents

(3) The zoning certificate, site plan and subdivision approvals shall limit OCCUPANCY usage of the property to PERSONS AGE SIXTY-TWO (62) AND OLDER AS ages specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (4) above

(4) The proposed project shall be located in an area that will be served by both public water and sewer within a designated growth area and shall not be located within an area to be served by well or septic

(5) The construction and development of the project must include a full program of amenities and other activities for older persons. At a minimum, the amenities must include

(a) A trail system, walking paths, and sidewalks for pedestrian accessibility,

(b) A clubhouse/multi-purpose building(s) or equivalent space sized at 20 square feet for every dwelling unit. A minimum of 1,500 sq. ft. must be provided. The maximum square footage required shall be 20,000 square feet,

(c) Active recreational open space (for the purpose of providing amenities, including but not limited to, a swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities at a rate of 1/3 acre per 100 dwelling units. A minimum of 1 acre must be provided. A single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement. Only the physical structure (i.e. footprint) of the clubhouse/multi-purpose building(s), not the parking area(s), will be considered in determining the area of active recreational open space,

(d) Passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities, and

(e) An appropriate phasing schedule in each phase of development to meet the needs of the residents

(6) If, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, or if the Age-Restricted Community (ARC) is an adaptive reuse of an existing structure or structures, extraordinary hardship will result from strict compliance with the requirements set forth in subsections (F)(5)(a) through (F)(5)(d) of this section, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification. However, the Planning Commission may

New text is shown in CAPITALS and underlined. Deleted text is shown as ~~strike-through~~

not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

(7) Prior to granting APFO approval for the project, the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited EXCLUSIVELY to housing for older persons AGES SIXTY-TWO (62) AND OLDER ~~and excludes secondary school-aged or younger children from residency. These covenants must require that appropriate enforcement mechanisms are in place to enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act.~~ The restrictive covenants must also provide that any subsequent revisions or modifications of the covenants pertaining to age limits for occupancy shall be submitted to the Planning Commission for approval prior to recordation. These revisions or modifications will require the re-approval of the Phase II plan, site plan, zoning certificate, and subdivision plat(s), as necessary.

(8) Prior to recordation of subdivision plats and issuance of building permits or the zoning certificate for the project, the restrictive covenants described above in subsection (F)(7) must be recorded in the county land records.

(9) Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

(10) Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

~~(11) "Appropriate enforcement mechanisms" as used in this section means that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than 1 homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.~~

**§8. Effective Date.** - This Ordinance shall be effective on the 26th day of

June, 2008

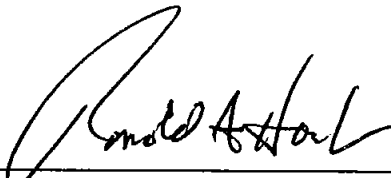
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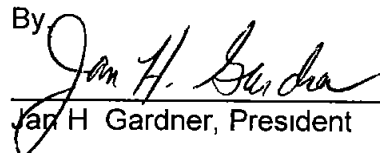
**§9. Transitional Provisions** – This Ordinance shall not apply to developments that have received APFO approval as of the effective date of this Ordinance, for so long as the APFO approval remains valid

The undersigned hereby certifies that the Board of County Commissioners of Frederick County, Maryland approved and adopted the foregoing Ordinance on the 17th day of July, 2008

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

  
\_\_\_\_\_  
Ronald A. Hart,  
County Manager

By   
\_\_\_\_\_  
Jan H. Gardner, President

KAM  
7/17/08